In the High Court of Uttaranchal, at Nainital.

Government Appeal No. 2021A (M/B) of 2001
(Old No. 112-D/1999)

State ……. Appellant.

VS

1. Shekhar Chandra.
2. Madan Mohan @ Kannu
3. Deep Kumar @ Dalip Kumar
4. Lalit Kumar
5. Uma Kant
6. Rajendra Kumar
7. Harish Chandra. …..Respondents

Sh. H.C. Pande learned AGA for the State.

Dated: 28-07-2005

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

P.C.:

Heard Sh. H.C. Pande learned AGA for the State and perused the affidavit of Sh. Gopal Singh filed in support of the application under Section 5 of the limitation Act, 1963 for condonation of delay in preferring the Government appeal. The cause shown for delay is sufficient, therefore, the application for condonation of delay is allowed.

2. Heard and perused the judgment dated 9-3-1999 under appeal. The accused were acquitted of the charges levelled against them by the learned Sessions Judge after considering the evidence of all the witnesses of the prosecution, particularly the evidence of so-called eyewitness Km. Uma. It is obvious from the judgment, that her evidence was not found credible and reliable because despite claiming to have seen the incident at about 3.30 pm, she did not disclose the names of alleged assailants to be incorporated in the FIR. She

disclosed the names of the alleged assailants on 19-9-1991, whereas the occurrence was alleged to have taken place on 16-9-1991. No plausible explanation was put forward by her for not earlier disclosing the names of the alleged assailants of the victim. It was also found that she claimed to have seen the incident from a distance of about 880 yards and in between the place of the occurrence and the spot from where she claimed to have witnessed the occurrence, there was dense forest. The learned Sessions Judge in the peculiar factual aspects of the case rightly opined that she could not have witnessed the occurrence from such a long distance beyond dense forest.

3. In our view, the evidence was properly appraised and considered to form an opinion that there was no cogent and reliable evidence to prove the implication of the accused in the commission of the crime.

4. Therefore, we are convinced that no useful purpose will be served to grant leave and to admit this appeal for hearing.

5. Therefore, leave to appeal is refused. Consign.

(B.S. Verma, J) **(Irshad Hussain, J.)**

M.K